

San Juan Unified School District

Business Support Services

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Dr. Pat Jaurequi, Superintendent of Schools
Michael G. Dencavage, Chief Financial Officer

June 30, 2009

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim Draft Staff Analysis (10/19/07)
Academic Performance Index, 01-TC-22

Dear Ms. Higashi:

Claimant San Juan Unified School District (District) respectfully requests that the Commission's staff (Staff) reconsider its recommendation to deny costs for a school district to notify CDE when circumstances may exist which would invalidate a school's Academic Performance Index (API) pursuant to California Code of Regulations, title 5, section 1032, subdivision (d). Staff argued that there were no legal or practical compulsions to notify the California Department of Education (CDE) of errors in the API.

Intermediate Intervention/Underperforming Schools Program (California Education Code sections 52053-52055.51, 52056.5 and 52058): Schools that scored below the 50th percentile on the Spring 1998 and Spring 1999 administrations of the STAR tests are invited to participate in the II/USP, the purpose of which is to provide those schools with the opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.

Staff has recommended denial of the above sections as a test claim since there is no legal or practical compulsion. However, the potential consequence of not participating in the aforementioned program is that a state-monitored school will be established and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school.

Nearly all state school administrators would contend such penalties would be substantial and severe and that there is a practical and legal compulsion to participate in the program. The

Supreme Court in *Kern* [*Department of Finance v. Commission on State Mandates* (Kern High School District) (2003) 30 Cal.4th 727] stated that state mandates could be found in cases of practical compulsion on the local entity, if there is a substantial penalty for not complying with the statute.

District argues that the California Supreme Court, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, has held that the determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program's design evidences an intent to coerce, (3) the penalties assessed for non-participation, (4) the legal and other practical consequences of non participation. District reiterates that, "the concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it," and argues it would be fiscally irresponsible to turn down the state funds, since district employees and their "exclusive representatives" (unions) know about the program.

District further asserts the contentions stated above also apply to High Achieving/Improving Schools Program (California Education Code section 52056, except subdivision (b)); and to Governor's Performance Award Program (California Education Code section 52057; California Code of Regulations, title 5, sections 1031-1033, 1036, 1038-1039).

Staff also finds that California Education Code section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions, and because there is no evidence that school districts have incurred costs mandated by the state to comply with these provisions. Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

It is well established that a reimbursable mandate may exist despite the claimant not claiming any reimbursable costs in a fiscal year. To deny a test claim on the basis of not incurring reimbursable costs is improper and lacks any legal authority.

Sincerely,



Michael G. Dencavage
Chief Financial Officer

c: Dr. Pat Jaurequi, Superintendent
Linda C. T. Simlick, General Counsel
Sharon Rew, Controller

PROOF OF SERVICE

I declare I am a citizen of the United States, over the age of 18 years, and not a party to this matter. I am employed in the County of Sacramento, and my business address is 3738 Walnut Avenue, Carmichael, California 95608.

On June 30, 2009, I served a copy of the following documents:

June 30, 2009, Letter from Michael G. Dencavage, San Juan Unified School District, to Paula Higashi, Executive Director, Commission on State Mandates regarding Test Claim Draft Staff Analysis (10/19/07) Academic Performance Index, 01-TC-22

by placing in sealed envelopes addressed to each of the individuals identified below for collection and mailing by the United States Postal Service, following standard business practices at Carmichael, California.

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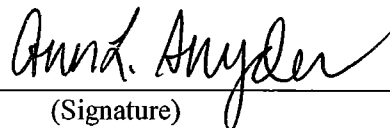
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I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2009, at Carmichael, County of Sacramento, California.

Ann L. Snyder
(Print Name)


(Signature)



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Return Services Requested

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